

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JANICE LAVONE LEE §
v. § CIVIL ACTION NO. 6:11-CV-506
COMMISSIONER, SOCIAL SECURITY §
ADMINISTRATION

ORDER OF DISMISSAL

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this action, has been presented for consideration. The Report and Recommendation recommends that the decision of the Commissioner be affirmed and the complaint be dismissed. Plaintiff has filed written objections.

Having made a *de novo* review of the objections filed by Plaintiff, the Court finds that the findings, conclusions and recommendation of the Magistrate Judge are correct. Plaintiff's objections continue to argue issues beyond Step Two, although as the Report and Recommendation points out, the ALJ determined at Step Two that Plaintiff's medically determinable impairments are non-severe, which mandates a finding of "not disabled" at that step. Plaintiff's arguments are largely directed at contentions the ALJ should have found her impairment equaled Listing 1.02; that her residual functional capacity was incorrectly determined; that the ALJ did not pose a hypothetical question to the vocational expert, and other issues beyond Step Two. At most, she argues that when consultative examining physician Dr. Toubia sent her for X-rays, the radiologist by "error" gave her a thoracic spine X-ray instead of her left shoulder. Objections at 1. However, as the Magistrate Judge made clear, Dr. Toubia sent Plaintiff for both a thoracic spine and left shoulder X-ray; Plaintiff submitted to the first but did not remain for the second. Otherwise, Plaintiff relies exclusively on

her subjective evidence of pain, as she did in her original argument. That is insufficient; the medical evidence of record is scant as to any objective medical examinations or testing at all.

Having conducted a *de novo* review, this Court finds the Report and Recommendation to be correct. Therefore, Plaintiff's objections are without merit and will be overruled. The findings and conclusions of the Magistrate Judge are therefore adopted as those of the Court.

In light of the foregoing, it is

ORDERED that Plaintiff's objections are hereby **OVERRULED**. It is further

ORDERED that the decision of the Commissioner is **AFFIRMED** and the complaint is hereby **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any motion not previously ruled on is **DENIED**.

So ORDERED and SIGNED this 29th day of November, 2012.



LEONARD DAVIS
UNITED STATES DISTRICT JUDGE